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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))	CC Docket No. 96-128

DOCKET FILE COPY ORIGINAL

MOTION TO FILE COMMENTS ONE DAY LATE

Pursuant to Section 1.46(b) of the Commission's rules, 47 C.F.R. § 1.46(b), the International Telecard Association ("ITA"), by its attorneys, respectfully submits this motion to file comments in this docket one day late. Mechanical photocopying difficulties delayed the timely submission of the attached comments, which were delivered to the Secretary at 5:35 p.m. on July 1, 1996, the date due for filing.

All Commission Staff, including the Common Carrier Bureau's Enforcement Division, have been timely served with the attached comments. The Commission's inclusion of the comments in the record is in the public interest, will not prejudice interested parties and will provide input that will allow the Commission to more completely examine the issues raised in its Notice of Proposed Rulemaking.

Respectfully Submitted,

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and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

<u>COMMENTS OF CONQUEST LONG DISTANCE CORP.</u>

ConQuest Long Distance Corp. ("ConQuest"), by its attorney, respectfully submits this response to the Commission's Notice of Proposed Rulemaking ("NPRM")[1] requesting comment on implementation of the payphone compensation provisions of Section 276 of the Telecommunications Act of 1996 (the "1996 Act").[2]

As a resale carrier specializing in the provision of prepaid telephone card services, ConQuest urges the Commission to recognize that payphone compensation has the potential to substantially undermine the highly competitive structure of the prepaid card market, to the detriment of American consumers. *A poorly designed payphone compensation scheme could, in a very real sense, represent the death knell of the new and competitive prepaid telecard industry.* The Commission must be sensitive to this potential by developing a compensation system that does not adversely affect the burgeoning pre-

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 96-254, CC Docket No. 96-128 (released June 6, 1996)("NPRM"). These comments address Section II.A of the NPRM dealing with payphone compensation methodology.

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996)(to be codified at 47 U.S.C. § 276). References to the 1996 Act will, for clarity, be to the sections of the Communications Act of 1934 as amended by the Act.

paid card market or discriminatorily impact smaller resale prepaid card service providers.

INTRODUCTION AND SUMMARY

Payphone compensation under Section 276 of the Telecommunications Act of 1996 poses special issues for prepaid telephone cards, or "telecards."[3] Yet while it recognizes that prepaid cards are one of the types of "dial-around" access code calling for which "fair" compensation to payphone service providers ("PSPs") is due under the 1996 Act, the NPRM does not address the unique technical and competitive impact of per-call payphone compensation on prepaid card services.

These consequences will be very severe. Telecard services are the most vibrantly competitive area of the telecommunications industry today. Hundreds of small entrepreneurial companies have entered the market, offering long-distance services at extremely low rates, serving populations (including minorities and low-income consumers) that lack realistic telephone alternatives from local exchange carriers ("LECs") and traditional interexchange carriers ("IXCs"), and providing predictable, "up-front," "unit-based" pricing structures. Competition in telecards has reduced rates well below those typically charged by OSPs, including the largest nationwide carriers, and prepaid cards have opened up new distribution alternatives for telephone services—including convenience stores, automated vending machines and "promotional" campaigns—offering consumers unparalleled convenience.

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[3] ConQuest is a member of the International Telecard Association ("ITA"), and concurs with ITA's opening comments in this proceeding.

Many if not most of these benefits would be lost if prepaid card services, rates for which currently range from 19¢ to approximately 40¢ per minute, were responsible for payment of compensation directly to PSPs. ConQuest therefore urges the Commission to implement a payphone compensation system under which all providers of "800" toll-free access services would pay the per-call charges assessed by PSPs. These would include both access services provided to end users (*e.g.*, 1-800-COLLECT and 1-800-CALL-ATT) and those provided to resale carriers for use in telecard services. For instance, on ConQuest prepaid card calls placed via "800" access provided by a facilities-based carrier, that IXC would pay the per-call charge, while ConQuest itself would pay the per-call charge for calls place via its own "800" access services.

This is the most important of several conditions proposed by ConQuest in these comments. These proposals are not intended to prevent PSPs from assessing charges for prepaid card calls placed from their payphones, but only to recover those charges in a way that preserves the competitive market and rate structure of telecard services. Where payphone-origination charges are paid by the underlying 800 access carrier, their recovery will be spread across a broader base of traffic and reduce billing and collection costs, thus minimizing upward pressures on telecard rates and eliminating a substantial risk that larger telecard providers—those benefiting from the reduction in the Carrier Common Line Charge ("CCLC") and general LEC switched access charges—will engage in predatory and anticompetitive pricing in the prepaid card market.

I. PER-CALL PAYPHONE CHARGES SHOULD BE ASSESSED ON ALL PROVIDERS OF "800" ACCESS SERVICES INSTEAD OF DIRECTLY ON TELECARD SERVICES

In its March 1, 1996 decision in the *Pay Telephone Use Fee Waivers* proceeding,[4] the Common Carrier Bureau allowed Ameritech and Southwestern Bell to implement a per-call payphone compensation plan assessing each IXC, including telecard providers, a charge of 25.6¢ for each call placed from a payphone. The Bureau emphasized, however, that 1996 Act's payphone compensation mandates "[o]bviously . . . cannot be fulfilled in the limited context of a waiver proceeding, " *id.* ¶ 26, and therefore that the Bureau "[did] not prescribe a methodology for future pricing of payphone use in this order." *Id.* ¶ 34.

In now prescribing this methodology, the Commission will need to examine issues surrounding prepaid phone card services that were left unresolved by the Bureau in the *Pay Telephone Use Fee Waivers* proceeding. The first of these issues is whether the Commission's proposed "carrier-pays" methodology should entail PSP charges directly to telecard providers, or whether the IXCs providing toll-free access used for telecards should be responsible for handing the billing and payment functions with PSPs.[5] ConQuest submits that competitive, end user and PSP interests, as well as the statutory

[4] *Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules to Restructure its Rates to Establish a Pay Telephone Use Fee Rate Element,* DA 96-268 (released March 1, 1996), *application for review pending* ("Waiver Order"). The Bureau's subsequent decision to permit Ameritech's implementing tariff to take effect, and denying several petitions to reject or suspend the tariff transmittal, similarly did not decide whether Ameritech's approach was consistent with the 1996 Act. *Ameritech Operating Companies, Tariff* F.C.C. *No. 2, Transmittal Nos. 953, 966 and 974,* Report No. TD-10 (May 23, 1996).

[5] A complete description of the telecard market and the technical parameters of prepaid card services is included with ITA's comments in this proceeding.

purposes of Section 276, would all be best served by the "800 carrier-pays" method we propose.

Competition and end users would be substantially harmed if all telecard calls originating at payphones were assessed a per-call payphone charge. Prepaid card services are generally provided at unit-based prices, with a fixed, "postalized" per-minute rate applicable for all calls, regardless of where they are originated. Assessing per-call payphone usage charges on telecard services makes these pricing structures difficult, if not impossible, to continue. Even if smaller carriers had the technology to determine on a real-time basis which telecard calls came from payphones (which they do not), adding a per-call fee to a *pre-paid* communications service obviously results in the end user not receiving the number of minutes of use purchased, or a higher per-minute rate, or both.[6]

Where some, but not all, of a carrier's traffic is payphone originated, the imposition of a per-call charge for payphone calls thus defeats a central consumer and competitive benefit of telecards. Since the Commission has struggled for years to protect consumers using payphones and to ensure advance notice of rates for Operator Service Provider ("OSP") customers—concerns that are *completely absent* for telecards—fixed, unit-based prepaid pricing is a significant consumer advantage that should applauded, not threatened by regulation. Furthermore, the only possible alternative to

[6] For instance, if a $10 prepaid card offers 40 minutes at 25¢ per minute, a 25¢ per-call charge could either be recovered by "decrementing" usage from the card to recover the cost or by increasing the per-minute rate to reflect the amount of the charge (*i.e.*, 6.25¢ per minute, assuming an average call length of four minutes). As explained in the ITA comments, either of these alternatives creates significant contract and tariff exposure for telecard providers with respect to outstanding cards already in circulation.

a call-based recovery mechanism for telecard providers is *to increase rates across-the-board for all prepaid services*, thus requiring end users placing calls from hotels, home and other locations to suffer unnecessary rate increases in order to offset charges from PSPs. Because the Commission has long agreed that telecommunications costs should be recovered from those causing the costs, a per-call payphone use fee is difficult to justify in the context of prepaid telecard services.[7]

Another important reason to assess payphone compensation responsibility on 800 access carriers is that the purposes of Section 276 are better served with this approach. One of the key functions of the 1996 Act's payphone compensation provisions was to remove LEC payphone costs from switched access charges. *See* 47 U.S.C. § 276(b)(1)(B). This change will reduce the CCLC, and thus overall switched access charges, for facilities-based IXCs. If these carriers receive the benefit of access charge reductions, they should also be assessed the responsibility for payment of payphone usage fees.[8] Moreover, depending on how the Commission defines a "completed" call for purposes of the statute, as discussed in Section II of these comments, imposing payphone charges on telecard providers could result in double-recovery by LECs, thus flatly contradicting the principle that shifting payphone expenses from access charges to a new system should be "revenue-neutral" to the LECs.

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[7] Imposing payphone charges on telecard providers would require significant technology and billing system costs for telecard providers, as well as administrative costs for PSP billing of hundreds of prepaid service carriers. These considerations make a "800 carrier pays" methodology more efficient for PSPs as well.

[8] As AT&T noted in the context of the *Pay Telephone Use Fee Waivers* proceeding, the LECs "have not shown an imbalance between carriers receiving interstate payphone traffic and those paying for it" in switched access charges. *Waiver Order* ¶ 12.

Section 276's focus on switched access charge reform should therefore be interpreted to achieve symmetry between the carriers benefiting from access charge reductions and those responsible for payphone compensation. By and large, most telecard providers are resellers that will receive no benefit from the CCLC changes associated with this proceeding. Facilities-based carriers, in contrast, including 800 access providers, will experience a substantial (ideally offsetting) cost reduction as a result of the removal of LEC payphone costs from access charges. Assessing payphone compensation responsibility on these underlying facilities-based carriers would thus limit the ultimate rate effect of the Commission's new payphone compensation methodology, because for many IXCs the result would be a "wash," *i.e.*, access charge reductions would be balanced by payphone usage fees.

This approach would also eliminate a substantial anticompetitive potential that might arise from assessing payphone charges directly on telecard providers. If the larger IXCs that provide 800 access for the prepaid card industry are not responsible for payphone compensation, they will receive millions of dollars of cost savings associated with CCLC and access charge cost reductions. In contrast, since many if not most telecard providers have no Feature Group D based services, the new system would represent a new, exogenous cost to them. Thus, the larger IXCs are now providing telecard services as well, they would have the ability, if telecard services were directly responsible for payphone fees, for applying all of the access charge reduction to their prepaid card rates, thus putting independent telecard providers in an anticompetitive price squeeze. If this result is sanctioned, the competitive structure of the telecard industry—one of the few segments of the interstate market where smaller carriers have been the price leaders and more vigorous price competitors—will be fatally changed, and many smaller telecard provider driven out of business entirely.

In sum, the Commission should preserve the competitive and pro-consumer rate and market structure of the prepaid phone card industry by assessing payphone compensation responsibility on the providers of all interstate "800" access services. In this way, telecard unit-based pricing can be preserved, transaction and PSP administrative costs minimized, and anticompetitive pricing by larger IXCs avoided. If the Commission imposes payphone usage fees directly on telecard issuers, it will substantially undermine the consumer and social benefits of this new telecommunications market.

II. THE COMMISSION SHOULD REQUIRE A NUMBER OF CONDITIONS FOR TELECARD-RELATED PAYPHONE CHARGES, INCLUDING LIMITATIONS ON PSP BILLING FOR UNCOMPLETED TELECARD CALLS

The absolute cost burden of a per-call payphone compensation scheme will be extremely harmful to the many smaller carriers in the prepaid phone card industry, where profit margins are virtually non-existent.[9] This effect would be even worse—and place the Commission's rules in legal jeopardy, as well—if LECs were permitted to apply per-call payphone usage charges to telecard calls using the defective system for determining "completed" calls allowed in the *Pay Telephone Use Fee Waivers* proceeding and subsequent tariffs.

[9] For instance, since rate competition in the interstate telecard market is fierce, an inflated charge for payphone "access" will devastate competition in this emerging marketplace. Average charges for telecard services are approximately 33¢ per minute, with a mean holding time (call length) of 4 minutes. Thus, on an average revenue per completed call of $1.32, a 25.6¢ pay telephone use fee amounts to nearly 20% of a provider's gross revenues—entirely wiping out profits for telecard services. *See* Letter from Glenn B. Manishin, counsel to ConQuest, to James Schlichting, FCC, dated April 18, 1996 (protesting Ameritech tariff transmittal).

Section 276 is very clear that PSPs may only receive compensation for "completed" calls. Yet the NPRM does not propose a definition of "completed" for purposes of the 1996 Act, and this disputed issue was left unresolved in the *Pay Telephone Use Fee Waivers* proceeding. Ameritech (and other LECs) argued there that a telecard call is completed where the user reaches the initial "800" toll-free number, regardless of whether a voice call is ever made to the desired party. The PSPs will likely argue the same thing in their comments on the NPRM here.

This definition of a "completed" call cannot stand. First, there is nothing in Section 276 indicating that Congress intended a completed call to mean a user's interaction with a switching-platform based voice-prompt system—for inputting authorization codes and dialing terminating telephone numbers—rather than the called party. Indeed, the House Report makes clear that charges should apply to "toll free calls to subscribers of 800 and new 888 services *and calls dialed by means of carrier access codes.*"[10] Thus, since telecard services are calls made "by means of" accesss code dialing, *see NPRM* ¶ 11 & n.36, Congress clearly intended payphone charges to apply when a call is completed, not merely when access to the telecard carrier is established.

Any other approach would require that telecard users unfairly, and unnecessarily, pay per-call charges for the large proportion (more than 50% for ConQuest) of calls that are uncompleted due to busy/no answer, misdialing or invalid authorization PINS—calls for which the telecard carrier otherwise receives no revenue. Indeed, if these sorts of calls were placed to the PSP's presubscribed OSP via "0+"

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[10] H. Rep. No. 104-204, 104th Cong., 1st Sess. 88 (1995)(emphasis supplied).

dialing, the payphone operator would receive no commission revenue. Therefore, "fair" compensation under Section 276 cannot include per-call compensation from "dial-around" carriers when a call placed directly with the PSP's own carrier would result neither in an end user charge nor any PSP compensation.

ConQuest therefore submits that the Commission must require that PSPs only bill and collect for telecard calls completed to the dialed/called party. ITA has proposed a workable scheme, modeled after the PIU system applied to Feature Group A & B access charges, with which ConQuest agrees.

Several other conditions should be attached to the Commission's payphone compensation methodology with respect to payphone-originated telecard calls. These are:

- If a surrogate is used in lieu of answer supervision for call LEC completion measurement, it must be at least 60 seconds.

- The level of PSP usage charges should be no higher than the applicable price for local coin calls.

- Payphone usage charges should not be assessed on carrier 800 calls made from payphones for which "0+" calls are converted automatically to 800 access call, in order to prevent PSP double-recovery.

A. Call Completion Measurement

Ameritech's payphone tariff was permitted to take effect despite substantial opposition from the telecard industry to application of a 25-second timing surrogate to identification of call completion. Under this approach, the PSP would bill for dial-around calls if the caller stayed on the line for 25 seconds or more, assuming from the usage time that the call was completed.

Such an approach would be completely incorrect for prepaid card services. Telecard consumers frequently include low-income end users who do not have their own telephones, including a large proportion of minorities, for whom "navigating" the voice prompted menus associated with prepaid cards is a new experience. Difficulty in placing calls frequently requires these consumers to spend more than 45 seconds on the line, whether or not a call is completed.[11] Additionally, a shorter surrogate would create incentives for payphone owners to engage in usage-fee fraud by programming their equipment to repeatedly dial 800 access numbers in order to generate false records of "completed" calls. *See* NPRM ¶ 23. As it did in the context of IXC billing issues in the 1980s (when IXCs also could not technically measure call completion), the Commission should hold that any time-based surrogate for call completion for telecard calls be no shorter than 60 seconds in order to be considered reasonable under the Communications Act.[12]

B. Level of PSP Payphone Usage Charges

ConQuest does not have access to sufficient data to provide specific cost proposals for the level of PSP per-call payphone usage charges. As a policy matter, however, we propose that per-call charges be "capped" at the local (or, if preempted, FCC-determined) coin call rate. This is the best approach for several reasons. PSP "dial-around" compensation is not designed to recover the revenue lost due to an end user accessing a carrier other than the PSPs' presubscribed OSP, because Commission

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[11] *See* Letter from Glenn B. Manishin, counsel to ConQuest, to James Schlichting, FCC, dated April 18, 1996 (protesting Ameritech tariff transmittal).

[12] *See Bill Correctors, Ltd. v. United States Transmission Systems, Inc.*, Mimeo No. 703 (CCB 1984).

precedent and the 1990 Telephone Operator Consumer Service Improvements Act amendments[13] expressly allow payphone owners to access their own preferred carrier.

Furthermore, identification of any payphone usage costs on an industry-wide basis will be extraordinarily difficult, since the cost of payphone equipment, volume levels and related ratemaking variables are extremely different depending on PSP and payphone location—thus allowing some PSPs to charge excessive rates and recover far more than their actual costs. Therefore, the Commission is best served by setting PSP compensation on the *correct* "opportunity cost" basis—the foregone revenue the PSP would have earned had the user made a local coin call instead of using the payphone for "free" access to its IXC/OSP. This method would itself result in some overrecovery by PSPs (because local coin rates exceed PSP costs, and because dial-around eliminates PSP costs of coin jams and coin collection for that traffic), but is a more efficient and far method of setting compensation than one based on actual cost data from thousands of PSPs nationwide.

C. Exempting "0+" Calls Autodialed to 800 Numbers

Many IXCs provide most of their OSP services utilizing "800" access numbers, just like telecard services. In order to accomplish this, calls placed from payphones for which the carrier is the selected OSP are automatically dialed to the carrier's operator platform using an "800" access number, in a manner transparent to the end user placing "0+" calls. Because these calls represent traffic for which the PSP is receiving compensation from the OSP via commissions, application of per-call charges on such "800" payphone-originated calls would represent improper PSP double-recovery. Such

[13] 47 U.S.C. § 228.

traffic, which is not "access code" dialing, should be excluded from the payphone usage fee methodology established by the Commission in this docket.

CONCLUSION

The Commission should fashion a payphone compensation system that assesses charges on all providers of toll-free access from payphones, instead of imposing payphone usage fees directly on telecard service providers. The Commission should place a number of conditions on PSP payphone compensation charges, the most significant of which is that charges can only be applied to calls that are "completed" to the dialed number/party, not simply to a network or carrier access toll-free access number.

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Dated: July 1, 1996.

CERTIFICATE OF SERVICE

I, Cynthia Miller, do hereby certify on this 1st day of July, 1996, that I have served a copy of the foregoing document via messenger to the parties below:

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